

INTERNAL REVENUE SERVICE  
District Director  
c/o McCaslin Industrial Park  
2 Cupania Circle  
Monterey Park, CA 91755

Department of The Treasury

Date: NOV 26 1996

Employer Identification Number:

Case Number:

Person to Contact:

Telephone Number:

Refer Reply To:

Dear Applicant:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(5) of the Internal Revenue Code. Based on the information submitted, we have concluded that you do not qualify for exemption under that section.

FACTS:

You were organized as an association per your Article of Association adopted on [REDACTED]. Your purposes are:

1. To operate [REDACTED] in accordance with the laws of [REDACTED]
2. To promote public awareness of locally grown products and their use in the household.
3. To work with other direct marketing associations to share experiences and improve market management.
4. To educate consumer about direct marketing, food preservation, and food buying alternatives.
5. To promote agriculture in [REDACTED]

All funds generated by the association are dedicated to the operation and promotion of the [REDACTED]. Funds are generated by the collection of membership dues, \$[REDACTED] per farm, and stall fees up to \$[REDACTED]. Rental income from market stalls generates approximately [REDACTED]% of the total revenue. These funds are all used for operational costs including employees, marketing and public relations activities, licenses, permits, insurance, an administration costs such as

Code	Initiator EP/EO:TB:REV	Reviewer EP/EO:TB:REV	Reviewer EP/EO:TB	Reviewer EP/EO	Reviewer DD	Reviewer EP/EO:TB:REV
Surname	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Date	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]



bookkeeping, insurance, etc. From time to time certain growers or local merchants donate additional funds specifically for the hiring of local bands for performance during the Saturday market. The Board hires 2 part time employees to facilitate all activities associated with the [REDACTED], a market manager and a market coordinator.

Your activities consists of the following:

1. To operate four [REDACTED] which offer for sale fresh produce, bedding plants, trees and shrubs, honey, oysters and other local products. All local growers in the area are allowed to and are encouraged to participate in the markets. The growers are allowed to sell their products and retain the proceeds. There are two classes of membership, growers and supporting members. Any person who raises agriculture crops for sale in [REDACTED] can become a member.
2. To help sponsor the Women's, Infant's and Children's Nutrition program in their efforts to get fresh fruits and vegetables to low-income families.
3. To sponsor an annual Harvest Festival.
4. To support the County Fair and other local community activities.

ISSUE:

Does the organization qualify for exemption as an organization described in section 501(c) (5) of the Internal Revenue Code:

LAW:

Section 501(c) (5) of the Code provides for the exemption from Federal income tax for labor, agricultural, or horticultural organizations. The regulations state that organizations exempt under section 501(c) (5) are those which:

- a. have no net earnings inuring to the benefit of any member, and
- b. have as their objects the betterment of the conditions of persons engaged in the pursuits of labor, agriculture, horticulture; the improvement of the grade of their products, and the development of a higher degree of efficiency in their respective occupations.

Section 513 of the Internal Revenue Code defines a trade or business as follows:

"For the purposes of this section, the term 'trade or business' includes any activity which is carried on for the production of income from the sale of goods or the performance of services. For purposes of the preceding sentence, an activity does not lose identity as a trade or business merely because it is carried on within a larger



complex of other endeavors which may, or may not be related to the exempt purpose of the organization. Where an activity carried on for profit constitutes an unrelated trade or business, no part of such trade or business shall be excluded from such classification merely because it does not result in profit.

Trade or business has the same meaning that it has for the purpose of determining whether a particular expense is a deductible trade or business expense under Internal Revenue Code section 162 and includes any activity carried on for the production of income from the sale of goods or in the performance of services. See Internal Revenue Regulations section 1.513-1(b).

Section 502-1 states in part:

"...In the case of an organization operated for the primary purpose of carrying on a trade or business for profit, exemption is not allowed under section 501 on the grounds that all profits of such organizations are payable to one or more organizations exempt from taxes under section 501. In determining the primary purpose of an organization, all the circumstances, including the size and extent of the trade or business and the size and extent of those activities of such organization which are specified in the applicable paragraph of section 501."

Revenue Ruling 70-372, 1970-2 C.B. 118, denied exemption to an organization composed of agriculture producers whose main activity was to process data for farmers to use in improving milk production of their own herds. The basis for the denial was that the activity was a service which simply relieved the individual farmers of work they would normally perform themselves.

Revenue Ruling 69-51, 1969-1 C.B. 159, denied exemption to an organization who carried on as one of its lesser activities, the sale of cattle for its members. The revenue ruling determined that such sales did not promote the betterment of conditions of cattle breeders, but was carried on for the convenience of members and the production of income.

#### ANALYSIS:

The activity of your organization, of assisting local farmers with the sale of their crops is similar to the organization in Revenue Ruling 70-372 in that you will operate [REDACTED] for the benefit of the growers. The facts in Revenue Ruling 69-51 are also similar to your organization in that your main activity is the carrying on of a market where members can sell their goods and increase their income.

Consideration was also given to your organization as an organization described in section 501(c)(6) of the Internal Revenue Code. The facts remain the same.



LAW:

Section 501(c)(6) of the Internal Revenue Code describes certain organizations exempt from income tax under section 501(a) and reads in part as follows;

"(6) Business leagues, chamber of commerce, real estate boards, board of trade, or professional football leagues (whether or not administering a pension fund for football players), not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual."

Section 1.501(c)(6)-1 of the Income Tax Regulations provides in part as follows:

"A business league is an association of persons having some common business interest, the purpose of which is to promote such common interest. It is an organization of the same general class as a chamber of commerce or board of trade. Thus its activities should be directed to the improvement of business conditions of one or more lines of businesses as distinguished from the performance of particular services for individual persons."

Revenue Ruling 58-224, 1958-1 C.B. 242, states that an organization which operates a trade show did not qualify for exemption under Code section 501(c)(6) as they were rendering particular services to individual persons by conducting the show, providing publicity and advertising campaigns, and providing selling opportunities for the members.

Revenue Ruling 64-315, 1964-2 C.B. 147, discusses a non profit organization of merchants whose business constitute a shopping center and was held not to be exempt under section 501(c)(6).

Revenue Ruling 73-41!, 1973-2 C.B. 180, ( a further clarification of Revenue Ruling 64-315) states that merchants associations whose activities are directed to promoting the general business interest of its members do not qualify for exemption under Code section 501(c)(6).

ANALYSIS:

It appears that your primary purpose is to provide particular services for growers in the area by providing a selling place, advertising and publicity. You are not organized or operated to improve business conditions but to improve sales of the growers and to operate a farmers market for growers.

CONCLUSION:

It is the position of the Internal Revenue Service that your organization does not qualify for exemption from Federal income tax as an organization described in section 501(c)(5) or section 501(c)(6) of the Internal Revenue Code as you are primarily engaged in operating a trade or business to sell the products of your members.



Accordingly, you are required to file income tax returns on Form 1120, U.S. Corporate Income Tax Return, annually with your respective Service Center.

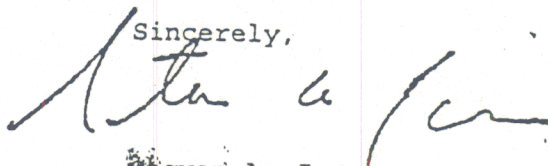
If you are in agreement with this proposed determination, we request that you sign and return the enclosed agreement Form 6018. Please note the instructions for signing on the reverse side of the Form.

If you are not in agreement with this proposed determination we recommend that you request a hearing with the office of Regional Director of Appeals. Your request for a hearing should include a written appeal giving the facts, law, and any other information in support of your position as explained in the enclosed Publication 892. You will be contacted to arrange a date for a hearing. The hearing may be held in the Office of Regional Director of Appeals, or if you request, at a mutually convenient District office.

If we do not hear from you within 30 days from the date of this letter, and you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies and will then become the final determination.

If you have any questions, please contact the person whose name appears on the heading of this letter.

Sincerely,



Steven A. Jensen  
District Director

Enclosure:  
Publication 892  
Form 5018